

**Kansas Open Records Act (KORA), K.S.A. 45-215 et seq  
Q&A**

- A. WHAT RECORDS ARE SUBJECT TO THE KANSAS OPEN RECORDS ACT (KORA)?
2. Are all records subject to the KORA?  
No. Only public records are subject to the KORA.
3. What is a public record?  
Public records are records made, maintained, created or possessed by a public agency - that is to say some branch of the state or local government. See section B for a discussion on what groups are public agencies.
4. Are records possessed by a private person, group or company subject to the KORA?  
No. Records solely possessed by private entities, persons or groups are not subject to the KORA.
5. Is the Freedom of Information Act (FOIA) the same as the KORA?  
No. The FOIA is the federal law that applies to records possessed by agencies and branches of the federal government. The FOIA and the KORA are different laws that have similar provisions, but are not exactly the same.
5. What is the purpose of the KORA?  
To allow the public to see or get copies of public records. It is the public policy of Kansas that "public records shall be open for inspection by any person unless otherwise provided, and this act shall be liberally construed and applied to promote such policy." K.S.A. 45-216(a). See also *Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407, Syl. ¶ 3 (2000). "The burden of proving an exemption from disclosure is on the agency not disclosing the information." *State Dept. of SRS v. Public Employee Relations Board*, 249 Kan. 163, 170 (1991).
6. Does the KORA give the media or press greater access rights than the general public?  
No. The KORA does not create any special or enhanced rights for any member of the media or the general public.
7. Does the KORA cover only paper documents?  
No. The KORA can cover any information that is possessed by a public agency and is in recorded form. The KORA applies to any recorded information regardless of form or characteristics"
8. Does the KORA cover computerized data possessed by a public agency?  
Yes. Computerized data possessed by a public agency is a "public record."

9. Does the KORA require that a public agency give the public complete access to a computerized data system?

No.

10. Does the KORA require that a public agency create a record in order to answer questions or requests for information?

No. The KORA applies to public records possessed by a public agency at the time the request is made. It does not require that a public agency do research for you, create a record it does not already possess, or write out their response to your questions.

11. Does the KORA apply to public records that may exist in the future?

No. Records not yet in existence are not subject to KORA; a prospective or standing request for "records as they become available" is not enforceable. If you want to see public records that may be created in the future, you need to make your request after the records have been created or exist.

B. WHEN IS A PERSON OR GROUP A PUBLIC AGENCY SUBJECT TO THE KORA?

1. What does it mean to be a "public agency" subject the KORA?

A public agency is the state or any political or taxing subdivision, or any office, officer, or agency thereof, or any other entity, receiving or expending and supported in whole or part by public funds. It is some office or agency that is connected with state or local government.

2. Is a business or group automatically subject to the KORA merely because it receives public funds?

No. No entity is included under KORA solely because it receives public funds in exchange for goods or services. K.S.A. 45-217(f)(2)(A). Receipt of public funds alone will not subject a mere vendor to the KORA. *However* K.S.A. 45-240, which was adopted in 2005, requires that certain otherwise private not-for-profit group receiving public funds provide some accounting concerning how that money was spent. For a copy of K.S.A. 45-240, see [www.kslegislature.org](http://www.kslegislature.org)

3. Can a not-for-profit entity be subject to the KORA?

Yes. But each group and situation is very fact specific. Although most private entities are not subject to the KORA, some nonprofit corporations might be covered by the KORA if they were created by some state or local unit of government and/or help carry out some governmental functions.

4. What are the tests for determining if a not-for-profit entity is subject to the KORA?

Cases generally turn on (1) the extent of public funding, (2) whether there is a specific service provided for the funds, (3) whether the entity was created by a governmental entity or statute, and (4) whether it is providing a traditionally governmental service. Other

factors to consider include the amount and degree of control over the non-profit by some obvious governmental entity, whether the employees and actions are covered by laws that usually only apply to governmental entities (e.g. Tort Claims Act, public retirement benefits, etc.) and so forth.

5. What are some examples of not-for-profit entities that are subject to the KORA?

- Some specific nonprofit entities providing mental health services are subject because there is specific statutory authorization for contracts with such nonprofits and in such a capacity they perform traditional governmental functions. A.G. Opin. No. 94-111.
- Nonprofit city hospital because authorized by statute and created by city. A.G. Opin. No. 88-61.

6. What are some examples of not-for-profit entities that are not subject to the KORA?

- In *Memorial Hospital Assn., Inc., v. Knutson*, 239 Kan. 663 (1986), a nonprofit operating a county hospital was determined not to be subject to the Kansas Open Meetings Act, KOMA. The association leased the hospital for \$1.00 per year and received \$228,000 from the county mill levy, budgeted by the county hospital board of trustees. The Court described this as limited receipt of public funds.
- The NCAA is not subject to KORA merely because member schools pay dues in exchange for services provided by the NCAA. A.G. Opin. No. 97-64.
- WSU Endowment Assn. A.G. Opin. No. 82-172.
- Sheltered Living, Inc., A.G. Opin. No. 2004-34 (a privately formed non-profit provided services to a special population, was heavily regulated, and received their funding from various public entities; however, it had no direct government entity oversight or control).
- The KORA does not apply to private associations or privately formed groups; e.g. private doctors, church council's, private youth groups, home-owner's associations, etc.

7. When does an otherwise private non-profit entity have to provide financial records on how they spend public funds?

When they are covered by K.S.A. 45-240, which can only be decided on a case-by-case basis. Under this statute, non-profit entities that receive more than \$350 a year from the government must generally account for how they expend that money: [Exemptions include (a) those non-profits that file a financial report with some public entity or agency; (b) those non-profits that are health care providers, (c) individual persons and (d) for-profit corporations or partnerships.] [Public funds means money received from the United States, the state of Kansas, or any taxing subdivision thereof, or any officer, board, commission or agency thereof.] See [www.kslegislature.org](http://www.kslegislature.org) for copies of statute.

8. Are judges subject to the KORA?

No. Judges are not defined as a "public agency" subject to the KORA. A judge's telephone records do not become public merely because another branch of government's

data processing facilities maintains the records for the judicial branch. A.G. Opin. No. 96-77.

9. Are court records subject to the KORA?  
Maybe. The KORA, by its express terms, applies to court records. However, the KORA allows judicial branch to make its own rules and the Supreme Court or district court may have a rule or an order closing a specific court record. Therefore, when seeking records from a court, check the court rules. The Kansas Supreme Court has posted information relative to obtaining access to court records at : <http://www.kscourts.org/orab.htm> .
10. Are records made, maintained or kept by a legislator or a member of a governing body (such as a city council member or a county commissioner) subject to the KORA?  
No. Under K.S.A. 45-217, records made, maintained or kept by a legislator or member of a governing body are not defined as public records. K.S.A. 45-217. However, if another person or public office has a copy of the same record, the KORA may apply to the record.
11. If a public official or employee has a record in their possession, while at work, does that automatically make it a public record subject to the KORA?  
No. Records owned by private persons which are not related to a governmental function are not covered by the KORA. See K.S.A. 45-217 definitions at [www.kslegislature.org](http://www.kslegislature.org) .

#### C. PUBLIC RIGHT TO INSPECT OR OBTAIN COPIES OF PUBLIC RECORDS

1. What is the general rule about public records being open to the public?  
Unless closed pursuant to specific legal authority, all public records are open for inspection and any person may view them to make abstracts or obtain copies of a public record.
2. May I remove a public record so that it can be copied somewhere else?  
Not without the record custodian's written permission. If copies cannot be made in the place where the records are kept, the custodian should allow arrangements to be made for use of other copying facilities. Public record custodians are not required to let original records out of their control/sight.
3. Does a public agency have to make copies of radio or recording tapes or discs, video tapes or films, pictures, slides, graphics, illustrations?  
No, unless those things were shown or played at an open public meeting, and even then not if copyrighted by someone other than the public agency. See K.S.A. 45-219. However, under K.S.A. 45-220, access to such types of documents must be provided if they qualify as public records, unless there is a exception from disclosure based upon the content or nature of the item.
4. Does a public agency have to allow me to see or get copies of computerized information?  
Maybe. Computerized information can meet the definition of a public record and must be provided in the form requested if the public agency has the capability of producing it in that form. However, the public agency is not required to acquire or design a special program to produce information in a desired form, but has discretion to allow an individual who

requests such information to design or provide a computer program to obtain the information in the desired form.

5. Does a public agency have to digitalize information for me, if they only possess it in analog (hard copy) form?

No. The KORA requires that public records (if the records are not otherwise closed by some law) be provided in the form that the public agency possesses and has the capacity to reproduce; it does not require the creation of the record (or information) in another format. If the public agency wishes to provide the extra service of converting a record into another format, it may do so.

6. Does the KORA require that a public agency acquire or design a software program in order to produce information in the desired format?

No. The KORA does not require a public agency to acquire or design a software program in order to manipulate or sort electronic data in order to produce a record in a requested format.

7. Can electronic records be closed?

Sometimes. Just as with paper records, some closure laws may apply to the electronic data, allowing or requiring specific records or information to be closed.

8. What if the public agency doesn't have a regular place of business or regular business hours; does the KORA still cover their records?

The KORA does not apply to "any officer or employee" if they are not provided with "an office which is open to the public at least 35 hours per week." However, this exclusion applies only to the part-time officials personally and not to the governmental entity they serve. Offices which do not have regular office hours are required to establish reasonable hours when persons may inspect and copy documents, but such offices may require 24 hours advance notice. See K.S.A. K.S.A. 45-217 and 45-220 at [www.kslegislature.org](http://www.kslegislature.org).

#### D. CHARGING RECORD FEES

1. May a public agency charge a fee to provide access to or copies of public records?

Yes. The KORA allows fees to be charged in connection with providing access to or copies of public records.

2. Does the KORA require that a public agency always charge fees in order to provide access to or copies of public records?

No. The decision as to whether to charge such fees is a discretionary policy decision. The KORA does not require that a record fee be charged.

3. What record fees does the KORA allow?

The KORA does not set specific fees. A public agency may charge reasonable fees: Reasonable fees are those that do not exceed the actual costs connected with providing the requested record(s). What the record request actually costs the public agency is a fact

issue, in every case, depending upon all the factors involved in complying with a specific record request.

4. Is there a poverty exception or some other special exception to record fees?  
No. While the FOIA (federal government record act) provides for a poverty exception, the KORA does not have such an exception. The KORA allows fees to be charged to recoup costs. The KORA does not provide any required exceptions to lawfully charged record fees.
5. May a public agency charge me for the time their staff spends on my record request?  
Yes. If that public agency's staff actually spends time on your request, the public agency may recoup what ever that employee or staff member's salary/pay would be for the time spent in trying to find, copy, examine, mail, or otherwise help you with a record request.
6. May a public agency charge me for computer services if I request copies of computerized data?  
It depends. If records are maintained on computers, fees may include the cost of any computer services, including staff time. However, proration of costs of computerizing is probably precluded, as such costs are normally required even without record requests. When public records are repackaged in a computerized form in order to facilitate public access to the records, additional fees for computerization may be charged, so long as the basic analog records are still available elsewhere at cost.
7. May a public agency charge overhead costs the agency would incur even without ever receiving a KORA request?  
No. Record fees for providing access to or copies of public records are intended to recoup the actual costs associated with providing access or copies. Such fees are not meant to pay for costs that would already be incurred by a public agency even without a record request. *E.g.* Overhead, capital improvements, utility bills, rent/building payments, etc.
8. May a public agency charge for the cost of staff time used to separate open from closed information in public records?  
Yes. Fees may include the cost of staff time spent in redacting open from closed information.
9. May a public agency charge me an advance fee before giving me access to or copies of public records?  
Yes. The KORA allows public agencies to require pre-payment of estimated costs. If the actual end cost is less, they must refund the difference. If it is more, they may bill you for the additional costs.
10. What can I do if not think a record fee is not reasonable?  
If you believe you were charged more then the actual costs associated with a record request, you can pursue it privately or make a complaint to the appropriate public entity. K.S.A. 45-219(c)(5) states that any person requesting records from an executive branch state agency may appeal the reasonableness of the record fees to the secretary of

administration, whose decision on the fee shall be final. A fee for copies of public records possessed by such a state agency which is equal to or less than \$.25 per page shall be deemed a reasonable fee. For all other fee disputes, you can make a written complaint to the Attorney General or county/district attorney. However, if the public agency can provide evidence that the fees are reflective of actual costs, the fees will be deemed reasonable.

E. PROCEDURES FOR OBTAINING ACCESS OR COPIES OF RECORDS. K.S.A. 45-220.

1. Who should I contact to make an open records request?  
The record custodian for the public agency in question.
2. Is there one place or agency that I can contact to get copies of all public records?  
No. There is no one central agency or repository that possesses a list or access to all public records. In order to obtain access to or copies of public records, you must contact each/all/every public agency that may have a copy of the records you are seeking. A list of and links to all Kansas state agency web sites is posted on-line at [http://www.accesskansas.org/government/agency\\_listing.html](http://www.accesskansas.org/government/agency_listing.html)
3. What if I do not know the name or address of the record custodian for a specific public agency?  
Each public agency subject to the KORA must provide, upon request, the office hours, name of the record custodian, any fee schedule they have created, and the procedures for obtaining records. In addition, each public agency should have a freedom of information officer assigned to assist the public with KORA requests and disputes. That officer is to provide information on KORA including a brochure stating the public's basic rights under KORA. The freedom of information officer is not required to act as the requester's advocate or legal advisor. See K.S.A. 45-220, 45-226 and 45-227 at [www.kslegislature.org](http://www.kslegislature.org).
4. May a public agency have more than one record custodian?  
Yes. The KORA permits the official custodian to designate other persons to carry out custodial duties. Some agencies are so large they need more than one person to help with such duties. But the ultimate duty to comply with the KORA rests with the official record custodian, not the designated custodian(s). See K.S.A. 45-217 and 45-220 at [www.kslegislature.org](http://www.kslegislature.org).
5. What are the procedures for each public agency?  
They may vary. Not all public agencies use the same procedure for all requests, so you need to ask each agency for their procedures.
6. When may I look at public records?  
When the public agency is open and has a staff member who is available to help you. A public agency is not required to allow un-attended access to public records; in order to protect public records, a public agency may assign someone to monitor or watch as public

records are being handled. Members of the public can inspect during regular office hours, as allowed by the record custodian, and during any established additional hours. If the agency does not have regular office hours it should establish reasonable hours when persons may inspect records. An agency without regular office hours may require 24 hour notice of desire to inspect. Notice shall not be required to be in writing. See K.S.A. 45-218 and K.S.A. 45-220, [www.kslegislature.org](http://www.kslegislature.org).

7. May a public agency require proof of my identity in connection with a KORA request?  
Yes. The public agency may require proof of identity. See K.S.A. 45-220 at [www.kslegislature.org](http://www.kslegislature.org)
8. May a public agency require a record request to be in writing?  
Yes. The public agency may require written record requests.
9. May a public agency require a specific form to make a record request?  
No. A public agency may ask that a request be in writing, but not on a specific form. However, some agencies make a form to help clarify what is being requested. The Attorney General's office does not have such a request form. See K.S.A. 45-220 at [www.kslegislature.org](http://www.kslegislature.org)

F. RECORDS THAT CONTAIN LISTS OF NAMES AND ADDRESSES

1. If I want to use a record that has names and/or addresses on it, so that I can contact the people listed in order to sell them something, may a public agency deny me access?  
Yes. The public agency cannot provide you with those names and addresses if you want to use that list in order to contact those listed in an attempt to sell them a service or product. K.S.A. 45-230 prohibits giving or using information contained in public records for that purpose.
2. May names listed in public records for businesses, not individual persons, be obtained and used to contact those businesses in an attempt to sell them a service or product?  
No. The prohibition in K.S.A. 45-230 pertains to the names and addresses of businesses listed in the public records as well as individuals. A.G. Opin. No. 87-73.
3. If I request a public record that has names and/or addresses in it, may a public agency require me to sign a special form?  
Yes. Under K.S.A. 45-220 the public agency may require written certification that the requester will not use lists of names and addresses contained in public records in order to attempt or solicit sales to those persons whose names are contained in the public record.
4. If a requester signs an affidavit stating that they will not use a public record containing names/addresses for a prohibited purpose, may the record custodian still deny access to the record?  
It depends. If a record requestor makes a certification that they will comply with the law the custodian is relieved of liability if the custodian provides the public records in good faith reliance upon such a written certification. A.G. Opin. No. 94-132. However, if the record custodian can prove they know that the statement in the signed affidavit is false,



they may still have grounds to deny a record request. In addition, any person who falsely signs such an affidavit may in some cases also be prosecuted for making a "false writing" (a criminal charge).

5. May someone use a third party to obtain names and addresses from public records in order to use them for commercial solicitation?  
No. Requesters of public records cannot lawfully circumvent the provisions of K.S.A. 45-230 by doing so indirectly; a third party who obtains this information from a "requestor" violates the law if it is used for commercial purposes. For example, a newsletter service which provides lists of names and addresses obtained from public records for its subscribers to solicit sales is still prohibited. A.G. Opin. No. 86-1.
6. Does the KORA prohibit obtaining lists of names and addresses for all uses?  
No. K.S.A. 45-230 does not prohibit commercial use generally, it just applies to use of the names to sell or offer to sell property or a service to those persons/entities on the list.
7. May a church obtain a list of names and addresses from public records, to use to send out information about area churches?  
Yes. Ministers or churches may use lists from public records to provide information about area churches; churches are generally not engaged in commercial business. A.G. Opin. No. 2000-35.
8. May someone use names and addresses from public records in order to offer to buy something from those listed?  
Yes. K.S.A. 45-230 does not prohibit use of lists of names obtained from public records in order to try to purchase property from the persons listed. A.G. Opins. No. 96-68 (water meters); 98-55 (promissory note underlying contract for deed).
9. May a school use names taken from public records in order to advertise classes?  
Yes, in most cases. K.S.A. 45-230 has a list of exceptions which allows some contacts to be made, in order to provide information about educational or professional training. You may read the whole statute by going to the legislature's web page, [www.kslegislature.org](http://www.kslegislature.org)
10. May someone obtain public records with names and addresses in order to re-publish that information to be used in some legal fashion?  
Yes, as long as the use of the new publication does not violate K.S.A. 45-230. Use of information obtained from public records to publish land ownership maps (A.G. Opin. No. 86-39) and "ownership product" documents (A.G. Opin. No. 89-47) does not violate the law.
11. What is the penalty for improperly giving or using names and addresses taken from a public record?

Any person (including the records custodian) who violates K.S.A. 45-230 (gives, or  
receive  
s

records for a prohibited use) can be penalized with the same civil fines and penalties in the KORA (this includes a fine of up to \$500 per violation).

G. **RESPONSE TIME AND PROCESS**

1. How soon should I get a response?  
The public agency must "act upon" (respond to) a record request as soon as possible, but no later than the end of the third business day following the date the request was received. K.S.A. 45-218. Weekends and holidays are not included when counting.
2. What if access or copies are not immediately granted or provided?  
If access or copies are not granted immediately (within the three business time frame) the public agency must give a detailed explanation for the delay. K.S.A. 45-218.
3. What if access or copies are denied?  
If the request is denied, a written statement of the legal grounds for the denial shall be given upon request. K.S.A. 45-218. Some degree of specificity is required.
4. Who has the burden of establishing that an exception to openness applies to a specific record?  
The public agency. The burden of establishing the applicability of an exemption from disclosure under the KORA requires the party claiming the exemption to provide more than conclusory language, generalized allegations, or mere arguments. A sufficiently

detailed explanation must be provided to show the reasons why an exemption applies to the requested records.

5. What if I want to know if a law closes a record in advance, before I make a record request?  
The KORA does not require record custodian's to provide or determine their response(s) before a request is made nor is it always possible to answer such questions in the abstract or as a hypothetical. You may review the list of exceptions in K.S.A. 45-221 (at [www.kslegislature.org](http://www.kslegislature.org)) if you want to try guessing. However, the best way to find out if a record custodian thinks a record is closed, and under what exception, is often to simply ask for access or copies of that record together with a request for a written citation to the law closing the record if access/copies are denied.
6. May access or copies be denied by a public agency if it places too much of a burden on the public agency or it's not the first time I've requested the records from the agency?  
Yes. Access may be denied if the request places an unreasonable burden in producing the record or is intended to disrupt the agency. K.S.A. 45-218(e). However, the Attorney General cautions public agencies not to use this provision very often; it should be used only in extreme circumstances. Refusal under this section must be sustained by a preponderance of evidence.

#### **H. WHEN CAN PUBLIC RECORDS BE CLOSED - ACCESS OR COPIES DENIED?**

1. May public records be closed - can access or copies be denied?  
Yes. But only if some law, or court order/rule, provides for such confidentiality or closure.
2. What kinds of closure laws exist?  
There are two types of closure laws - mandatory and discretionary. There are literally hundreds of laws (state and federal) that allow or require closure of specific types of records or information.
3. Who must know if some law closes a public record?  
The public agency possessing the public record has the burden of providing a citation to the law(s) that allow or require specific records to be closed. If you want to know the law(s) that the record custodian is relying upon in denying access/copies, make a request for a written citation to the law(s). Under K.S.A. 45-218, that citation must be provided if a record request is denied.

#### **I. RECORDS THAT ARE MANDATORILY CLOSED**

1. Are there records that a public agency is prohibited from releasing or making public?  
Yes. There are many kinds of public records (or information in some types of records) that are required to be kept confidential.
2. What kinds of records are mandatorily closed?

There are many laws (state, federal or court rules/orders) that make certain kinds of records confidential, most having to do with highly personal information of private citizens, or containing information that would harm the general public if it is released. Examples are listed in our KORA outline, available on-line at [www.ksag.org](http://www.ksag.org) (Link to "Open Government").

3. If a record is mandatorily required to close a specific type of public record, can the public agency make exceptions to that rule?

That depends entirely upon the confidentiality law in question. Some confidentiality laws have exceptions allowing access in certain circumstances, or to specific people/agencies, while other mandatory closure laws are stricter. The public agency must follow the dictates of any closure law that applies to a specific record.

4. If a public agency releases confidential records (or information in a record) what happens?

It depends upon the situation and the laws involved. Some mandatory confidentiality laws contain penalties. Other statutes are silent on what might happen if confidentiality is not maintained.

5. What if I believe I was personally harmed by release of confidential information contained in public records?

If an individual believes that release of a public record or information has caused them some harm they may contact the agency itself about the matter, to make a complaint about the matter. Unless the law provides for criminal penalties (which can therefore be sought by the Attorney General or a county/district attorney), any civil action seeking damages as a result of release of private information must be pursued privately by the individual(s) alleging the harm/damage.

## II. RECORDS THAT ARE DISCRETIONARILY CLOSED

1. Are some records allowed, but not required, to be closed?

Yes. Some laws give the public agency discretion, allowing them to close certain information or public records, but not requiring that the record be closed.

2. What types of records may be discretionarily closed?

There are many laws (state, federal or court rules/laws) allowing closure of specific types of public records or portions of the information in such records. Examples of some of these types of laws are discussed in our KORA out-line, on-line at [www.ksag.org](http://www.ksag.org) (See Open Government Section).

3. Do I have to know if a record is open or closed by some law?

No. That is the duty of the public agency. The record custodians possessing such records should be familiar with the laws that apply to the records in their possession. If the record custodian denies a request for access or copies, K.S.A. 45-218(d) requires the custodian to provide a written citation to the law(s) being relied upon, if that information is requested.

4. Is there some general law that I can read that lists the types of records that may be closed?

Yes. K.S.A. 45-221 contains the "laundry list" of public records that may be closed.

You may obtain a copy of that law on-line at [www.kslegislature.org](http://www.kslegislature.org)

### III. PERSONNEL RECORDS

1. May a public agency close personnel records?

Yes. Except for the names, salaries, position, length of service and any employment contract with the employee. K.S.A. 45-221(a)(4) permits closure of personnel records. That can include, performance ratings, hours worked, and individually identifiable records pertaining to employees or applicants for employment in public agencies. K.S.A. 45-221(a)(4). A.G. Opin. No. 91-127.

2. May a public agency close records connected with an applicant for employment with that agency?

Yes. The provisions of K.S.A. 45-221(a)(4) apply to applicants' records as well as the personnel records about current employees.

3. Why does the law allow personnel records to be closed?

So that the agency can attract and keep good employees, without breaching too much of their personal privacy. The personnel exception is designed to protect information that is normally kept in personnel records files, such as documentation of discipline, references and resumes, ADA and FMLA issues, as well as specific personal information such as home address and social security number.

4. Does the KORA allow closure of all information about public employees?

No. Although K.S.A. 45-221(a)(4) allows most personnel records to be closed, the statute requires certain information be made available: the "names, positions, salaries and lengths of service" of public officers and employees is open. In addition, actual compensation employment contracts or employment-related contracts or agreements must be made available upon request.

5. Does the KORA give public employees or public officials greater rights or more access to personnel records that are not open to the general public?

No. The KORA does not give public officials or employees any greater rights to access personnel records than it does members of the general public. If an employee, official, or supervisor does have some greater claim of access to such personnel records, it is not a right created by the KORA.

6. May the home addresses of public employees or officials be closed?

Yes, in most circumstances this information may be kept confidential. Home addresses of public employees may be closed. A.G. Opin. No. 97-52. *See also United States Department of Defense v. Federal Labor Relations Authority*, 510 U.S. 487 (1994) (disclosure of home addresses can be a clearly unwarranted invasion of personal privacy.)

7. Are independent contractors considered "personnel" whose records may be closed under K.S.A. 45-221(a)(4)?

No. The exemptions in K.S.A. 45-221(a)(4) do not apply to non-employees. Contractors are not employees. Independent contractors are not "personnel" or employees. Public records concerning independent contractors may not be closed under the personnel exception. See *Southwest Anesthesia Serv. v. Southwest Med. Ctr.*, 23 Kan.App.2d 950 (1997).

8. May letters of recommendation or character references for employees or applicants for employment be closed?

In most cases yes. Letters of reference or recommendation pertaining to the character or qualification of an identifiable individual, K.S.A. 45-221(a)(6), unless the recommendation is for someone to fill an elected or appointed office.

#### IV. CRIMINAL INVESTIGATION RECORDS

1. May a law enforcement agency refuse to provide copies of records created, collected, possessed or maintained in connection with a criminal investigation?

Yes. Under K.S.A. 45-221(a)(10), the KORA allows closure of criminal investigation records, which are defined at K.S.A. 45-217. A copy of these statutes are available on-line at [www.kslegislature.org](http://www.kslegislature.org)

2. Does the law enforcement agency have to give me a reason why they are closing a criminal investigation record/file?

Yes. But only if you ask for that explanation. K.S.A. 45-221(a)(10) requires custodians of criminal investigation records, upon request, to identify which factor(s) in (A) - (F) are applicable to the record(s) being closed under this exception. While criminal investigation records may be discretionarily closed, this is the one category of records which lists criteria for review of whether the decision (to close the record) is warranted. The factors to be considered basically weigh public interest in disclosure vs. harm of disclosure.

3. What factors are supposed to be considered in deciding whether to open or close a criminal investigation record?

K.S.A. 45-221(a)(10)(A)-(F) list the factors to be weighed in deciding whether to close or open criminal investigation records: The district court may order disclosure of such records, subject to such conditions as the court may impose, if the court finds that disclosure: (A) Is in the public interest; (B) would not interfere with any prospective law enforcement action, criminal investigation or prosecution; (C) would not reveal the identity of any confidential source or undercover agent; (D) would not reveal confidential investigative techniques or procedures not known to the general public; (E) would not endanger the life or physical safety of any person; and (F) would not reveal the name, address, phone number or any other information which specifically and individually identifies the victim of any sexual offense.

4. When it is it in the "public interest" to open or close criminal investigation records?

"Public interest' . . . means an interest in a matter affecting a right or expectancy of the community at large. Mere curiosity about the circumstances surrounding an investigation is not sufficient." *Harris Enterprises, Inc. v. Moore*, 241 Kan. 599 (1987).

5. Why did the legislature allow criminal investigation records to be discretionarily closed?  
The legislative intent behind the criminal investigation records exception to the Kansas Open Records Act is to protect innocent persons whose names might be involved in an investigation, either as possible suspects or as informants. *See Seck v. City of Overland Park*, 29 Kan. App. 2d 256 (2000). The closure authority also allows the criminal law enforcement agencies to protect the integrity of an-going case, protect informants, keep secret the methods of investigation not generally known by the public, and retain some ability to take future enforcement actions that on a "cold-case."
6. What if I am the victim of an alleged crime, does the KORA give me greater access to a criminal investigation record or file?  
No. The KORA does not give victims or anyone else "special" status with regard to obtaining access to public records that may be closed under K.S.A. 45-221(a)(10). Some other laws or legal principles may, but not the KORA.
7. What if I am the defendant in a criminal case; does the KORA give me greater access to a criminal investigation record or file?  
No. The KORA does not give defendants or anyone else special status with regard to obtaining access to public records that may be closed under K.S.A. 45-221(a)(10). Other laws or legal principles may, but not the KORA.
8. Is there a difference between criminal investigation records and criminal history record information?  
Yes. Criminal investigation records mean records of an investigatory agency or criminal justice agency as defined by K.S.A. 22-470, compiled in the process of preventing, detecting or investigating violations of criminal law. Criminal history record information (CHRI) describes an individual's arrests and dispositions. The CHRI records are part of the KBI computer system as electronic data (known as the computerized criminal history) and are also contained in paper documents at the KBI. Dispositions consist of data regarding prosecutors' actions, court dispositions and confinements in state correctional facilities. The KBI CHRI system consists of felony and misdemeanor events that occurred only in Kansas, and confinements to state correctional facilities under the control of the Kansas Department of Corrections. It does not include any arrests or dispositions that occurred in another state or under federal law.
9. May I obtain copies of my own criminal history information records?  
Yes. You can get this information (commonly called a "rap sheet") on yourself. It is available if requested by the person in question, and may be available to specific other entities (including law enforcement agencies). It is not available to the general public. For access to your own information, or to ascertain if information about someone else is available to you, you should contact the Kansas Bureau of Investigations (KBI) at

785-296-8200, or go to the KBI's web site at <http://www.accesskansas.org/kbi/criminalhistory/>

10. Are court records or docket sheets considered criminal investigation records?  
No. Court records and docket sheets may not be closed as criminal investigation records. See K.S.A. 45-217(b) and A.G. Opin. No. 87-145. There may, however, be other laws or court rules closing specific court records. Check with the clerk of the court or go to <http://www.kscourts.org/orab.htm> for more information on access to court records.
11. Are jail rosters or police blotters criminal investigation records?  
No. Police blotter, roster of jail inmates report are open to the required to be public. If a police department does not maintain a blotter, they are under a common law duty to disclose basic information about arrests reasonably contemporaneously with the arrest. A.G. Opin. No. 98-38.
12. Is the front page of the standard offense report considered a criminal investigation record?  
No. The front page of a standard offense report is open to the public.
13. Are mug shots or standard arrest reports open to the public?  
No. Mug shots or standard arrest reports may be discretionarily closed under K.S.A. 45-221(a)(10). Mug shots and standard arrest reports are not required to be open to the public. A.G. Opin. No. 87-25, 98-38.
14. May the log of breath test results be considered a criminal investigation record?  
Yes. A log of breath test machine results can be a criminal investigation record. A.G. Opin. No. 87-63.
15. May coroner reports or autopsies always be closed as criminal investigation records?  
Not always. Coroner reports are subject to disclosure unless they have been filed with the clerk of the district court and designated as a criminal investigation record. A.G. Opin. No. 86-5 and K.S.A. 22a-232. Autopsies as part of coroner's reports are open unless the coroner's report is filed as a criminal investigation record. *Burroughs v. Thomas*, 23 Kan.App.2d 769 (1997).
16. If no criminal charges are ever filed, does that mean that the criminal investigation records become open?  
No. This closure authority still exists, even if no criminal prosecution takes place; records qualifying as criminal investigation records may be closed, as long as the investigation was done by criminal law enforcement agency trying to determine if any crime occurred. See *Seck v. City of Overland Park*, 29 Kan. App. 2d 256 (2000).



17. May a law enforcement agency close public records or information that could reveal the identity of an undercover agent or informant?

Yes. Information which would reveal the identity of any undercover agent or any informant reporting a specific violation of law may be closed under K.S.A. 45-221(a)(5).

V. OTHER KINDS OF PUBLIC RECORDS THAT MAY BE CLOSED

1. May a public agency close notes, preliminary drafts, research data in the process of analysis, memoranda or other records in which opinions are expressed or policies or actions are proposed?

Yes. See K.S.A. 45-220(a)(20). However, this exception does not apply when such records are cited or identified in a public meeting. A.G. Opin. No. 90-14. *See also*, K.S.A. 45-221(a)(21) and (22); records of public agency having legislative powers. A.G. Opin. No. 90-92. These three provisions "are intended to protect an agency's internal pre-decisional deliberations from early disclosure." *See* Frederickson, Letting the Sunshine In, 33 Kan. L.Rev. 205, 249 (Winter 1985).

2. May a public library close its records on who checked out books or materials?

Yes. A public agency may close library patron and circulation records which pertain to identifiable individuals. K.S.A. 45-221(a)(23). Public agencies may also close archive and museum materials contributed by private parties may be closed if closure was a condition of donation and is not connected with a donation to a specific public official or employee. K.S.A. 45-221(a)(7) and (8).

3. May a public agency close public records in order to protect the personal privacy of an individual?

Yes, if disclosure of the information would constitute a clearly unwarranted invasion of personal privacy. See K.S.A. 45-221(a)(30). A.G. Opins. No. 92-149 (victim of sex offense); 99-55, 98-38, 87-25 (social security number). This is a very limited exception, and often turns upon the circumstances of each individual situation. K.S.A. 45-217 defines "clearly unwarranted invasion of personal privacy" to mean "revealing information that would be highly offensive to a reasonable person including information that may pose a risk to a person or property and is not a legitimate concern to the public." Cases from other states are not consistent, but generally employ a balancing test of public interest vs. private harm, allowing closure only when there is a some demonstrable harm that could occur if the information is released.

4. May a public agency close social security numbers, mothers' maiden names and dates of birth contained in public records?

Yes. In 2005 the Kansas Supreme Court held that this kind of information can be redacted from public records, pursuant to K.S.A. 45-221(a)(30). See *Data Tree, L.L.C. v. Meeks*, 109 P.3d 1226, \_\_\_ Kan.App.2d \_\_\_ (2005).

5. May a public agency close public records concerning prospective location of a business or industry where no previous public disclosure has been made?

Yes. See K.S.A. 45-221(a)(31).

6. May a public agency close public records connected with a bid process?  
Yes, in some situations.
- a. Specifications for competitive bidding may be closed until the specifications are approved. K.S.A. 45-221(a)(27).
  - b. Sealed bids may be closed until a bid is accepted or all rejected. K.S.A. 45-221(a)(28). A.G. Opin. No. 2008-3 (submissions are closed unless required to be open by another statute).
7. May a public agency close public records that contain engineering or architectural estimates for public improvements?  
Yes. See K.S.A. 45-221(a)(32). This statute allows a public agency to prevent bidders from learning a public agency's estimates of cost of a project, prior to awarding a bid.
8. May a public agency close public records containing financial information submitted by a contractor in connection with qualifying for a job?  
Yes. See K.S.A. 45-221(a)(33). See also K.S.A. 45-221(c)(2) and K.S.A. 60-432, trade secrets.
9. May a public agency close public records concerning emergency or security procedures?  
Yes. See K.S.A. 45-221(a)(12) and (45).
10. May a public agency close public records that would be privileged under evidence rules, including attorney-client or trade secrets?  
Yes. If such a privilege actually exists, which is usually a highly fact intensive issue. See K.S.A. 45-221(a)(2) and (a)(25).
11. May a public agency close attorney related records as attorney-client privileged or work-product information?  
Not necessarily. This issue has to be decided on a case-by-case basis. *Cypress Media, Inc. v. City of Overland Park*, 268 Kan. 407 (2000) held that attorney billing records are not closed, per se, as either attorney client privilege or work product privilege, and therefore generally must be disclosed if in the possession of a public agency. All narrative statements in attorney billing statements are not *per se* privileged. Rather, parties claiming the privilege will have to show its application to particular narrative statements in billing records. Parties objecting to discovery on the basis of the attorney-client privilege bear the burden of establishing that the privilege applies. To carry the burden, they must describe the documents or information to be protected, state precise reasons for the objection to discovery, and provide sufficient information to enable the court to determine whether each element of the asserted privilege is satisfied. A blanket claim as to the applicability of a privilege does not satisfy the burden of proof. Some details may be closed, but the burden is on the public agency to justify it. An investigation by an attorney for a client for the purpose of providing legal advice may be closed as attorney client privileged. See A.G. Opin. No. 99-48. If a record may be closed because of the attorney-client privilege rules, the client alone can waive that confidentiality.

12. May a public agency close medical or treatment records?  
Yes. If the terms of K.S.A. 45-221(a)(3) or some other statute/law apply to the agency and/or the records.
13. May a public agency involved in or contemplating a civil or administrative adjudication close investigatory records connected with a specific situation or case?  
Yes, if disclosure would interfere with a prospective administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent. *See* K.S.A. 45-221(a)(11).
14. If the public agency does not take civil or administrative action based upon its civil investigation, can the public agency still close civil investigation records?  
No. Unlike criminal investigation records, K.S.A. 45-221(a)(11) limits closure authority. Public records created or obtained in connection with a civil investigation can be closed under this exception, but only if disclosure would interfere with a *prospective* administrative adjudication or civil litigation or reveal the identity of a confidential source or undercover agent. An agency's civil investigatory file becomes open at the completion of the case. A.G. Opin. No. 97-76. A case may still be "pending" as long as some legal action on the matter is possible, including appeals etc.
15. What if the public agency is conducting a civil investigation concerning one of its own employees; can they still close personnel records even after the investigation and action is no longer pending?  
Yes. In some cases, records pertaining to an internal investigation of an agency's employee, disclosure of which would not interfere with a prospective administrative adjudication or civil litigation nor disclose the identity of a confidential informant, may nevertheless still be discretionarily closed if they fit the definition of a personnel record. A.G. Opin. No. 91-127.
16. Can a public agency close correspondence between a public agency and a private individual?  
Yes. The KORA authorizes closure of correspondence between a public agency and a private individual, other than correspondence intended to give notice of an agency action, policy or determination. *See* K.S.A. 45-221(a)(14). For example, a complaint to a professional licensing board may be closed, however the letter in response to the complaint is open because it is a determination. A.G. Opin. No. 97-76.

## **VI OTHER LIMITS ON CLOSURE**

1. May a public agency use a contract to close public records?  
No, not unless that contract has some statutory basis allowing or requiring closure of the record or information in question. Contractual provisions attempting to close certain terms are void as against public policy, provided no other closure exemptions apply. A.G. Opin. No. 91-116; 93-55. In order to close a public record, a public agency must be relying upon a law (federal or state) or a court rule/order, that applies to the record(s) or

information in question. A contract alone cannot be used to make something confidential or override the openness required by the KORA.

2. What if a public record contains information that "mixed"; some of it is allowed to be closed, but other portions are not allowed to be closed?  
If a public record contains material not subject to disclosure, that portion of the record may be deleted but the rest of the information or record must be made available. K.S.A. 45-220(d). *See also, Tew v. Topeka Police & Fire Civ. Serv. Comm'n*, 237 Kan. 96 (1985); *State ex rel. Stephan v. Harder*, 230 Kan. 573 (1982); K.S.A. 45-221(d). This separation of open from closed information (redaction) may be done in several ways; cutting out, blacking or whiting out, or someone removing the confidential information, or creation of a whole new record. What is appropriate will depend upon the facts. Keep in mind, however, that a public agency can legally charge fees for the staff time it takes to do such "redaction" work.
3. If a public record is reviewed and discussed during an open meeting, may it still be closed?  
Not usually! If a record is reviewed and discussed during an open meeting, a record that may ordinarily be discretionarily closed, generally becomes open. The reason for this rule is to insure that open meetings are not conducted "in code."

## **VII. ENFORCEMENT OF THE KORA**

1. Who can enforce the KORA?  
The KORA can be enforced by the Attorney General, a count/district attorney, or by private citizens. Any person, the Attorney General, or a County/District attorney, may file a KORA law suit in district court.
2. May I make a KORA complaint to the Attorney General's office?  
Yes. The Attorney General's office requests that all KORA complaints be timely made and in writing. This is done in order to verify facts, keep a record of the statements made, and in general assist with any investigation that becomes necessary.
3. What information should I include if I want to make a KORA complaint to the Attorney General's office?  
We only ask that the complaint be in writing. There is no specific form required. In order to allow us to proceed, the written complaint should include basic information such as (a) who is making the complaint (your name, address and phone number); (b) what public agency the KORA complaint is against; (c) what specific public records you requested; (d) when and how the public records were requested; and (e) what (if any) response(s) the public agency gave to you in connection with the record request. If there are any documents (letter, e-mails, etc.) connected with the request/response, we will need to see copies of those documents; keep the originals, but send us copies.
4. If my complaint is against a local unit of government, should I make it to the county/district attorney?

That is your decision. However, if you decide to make a KORA complaint against a local unit of government to the Attorney General, it is the policy of the Attorney General to refer KORA complaints against local units of government to the county/district attorney. A local unit of government includes a county, city, township, rural water district, improvement district, library board, etc.

5. What if I think the county/district attorney has a conflict or can't do a good job on my KORA complaint?

The Attorney General forwards all KORA complaints made against local units of government to the county/district attorney, who is the primary enforcer of law in each county. The county/district attorneys have primary jurisdiction within their county, however, if they believe they have a legal conflict, or cannot handle the KORA complaint for some other reason, they can contact the Attorney General's office to ask that a matter be handled by the Attorney General. However, the Attorney General cannot make that decision for the local prosecutor; the Attorney General is not the "boss" of local prosecutor's and cannot supervise or dictate local prosecutorial decisions or techniques. Individuals who want to control the investigation or dictate whether suit should be filed on a KORA matter may want to pursue the matter privately, with or without the assistance of a private attorney.

6. If I make a complaint to the Attorney General and/or to a county/district attorney, are they acting on behalf or as my attorney?

No. These officers are authorized to represent the interests of the general public. They are not at liberty to act as private attorneys for private citizens. You will not be "in charge" of how the case is handled. If you want that kind of attorney-client relationship with a lawyer, you will need to contact a private attorney.

7. Can I pursue a KORA violation on my own?

Yes. The KORA can be enforced privately. If you are representing yourself, you can act as your own attorney. If you want or need legal advice or help on handling a case, you will need to contact a private attorney to obtain those legal services.

8. In what courts are KORA enforcement cases filed?

Suit must be brought in the district court in the county where the records are located. If the records are located out of state, there is no cause of action under KORA. *Altevogt v. Youth Friends*, 29 Kan.App.2d 473 (2001). See also *Wichita Eagle v. Simms*, 50 P.3d 66, 274 Kan. 194 (2002).

9. What remedies or penalties can a district court order for violation of the KORA?

A district court judge presented with a KORA law suit may order injunction or mandamus; where the public agency is told turn over the records and to violate the KORA no more, if they are found to have violated the KORA; The court "shall" award attorney fees against defendant if it finds denial of access was not in good faith or against plaintiff if the action was not in good faith. The court may also order the losing party to pay for costs and reasonable attorney fees even for an appeal. A court can order fines of up to \$500 for "each violation" against public agency if the agency "knowingly violates any of the provisions of this act or that [it] intentionally fails to furnish information as required by this act. . . ." and

the case is brought by the Attorney General, District or County Attorney. See K.S.A. 45-222 and 45-223 at [www.kslegislature.org](http://www.kslegislature.org).

10. Does anyone go to jail for violating the KORA?

No. The KORA is a civil law; it is not criminal. There are no criminal penalties attached to violating the KORA.

**VIII. KANSAS PUBLIC RECORDS PRESERVATION ACT. K.S.A. 45-401 *et seq.***

1, Is it a violation of the KORA to destroy public records?

No. The KORA does not speak to preservation of public records. "Nothing in this act shall be construed to require the retention of a public record nor to authorize the discard of a public record." K.S.A. 45-216(b). However, other laws may require that a public record be kept for a specific time period.

Are there any laws that require public records to be kept for specific time periods?

State agencies and counties are subject to the Preservation Act and are prohibited from destroying public records except as permitted by minimum records retention schedule as set forth by State Records Board. K.S.A. 45-403; 45-404(b). Only state agencies and counties must follow these retention schedules. Unless some specific law applies to a specific record, all other public agencies may dispose of their records as they deem advisable.

How do I contact the State Records Board?

The State Records Board, while technically attached to the Kansas Department of Administration, in practice functions through State Historical Society, Div. of Archives. K.S.A. 75-3501 *et seq.* The state archivists may be contacted at 913-272-8681. County commissions may petition Records Board for departures from local government general schedule. K.S.A. 45-405(c).

Where can I get a copy of the record retention schedules for state agencies or counties?

The State Records Board has published State Records Retention Manual, which contains general schedule for state agencies. Information, including a copy of the schedule, may be accessed at <http://www.kshs.org/government/records/stategovt/index.htm>.

The State Records Board has published a Local Government Records Manual which sets forth the schedule of minimum retention periods for counties. Information, including a copy of the schedules, may be accessed at <http://www.kshs.org/government/records/localgovt/index.htm>

Are there any criminal laws connected with destroying public records?

Yes. Altering, destroying, defacing, removing or concealing any public record without legal authority is a class A misdemeanor. K.S.A. 21-3821.

Are cities or other smaller units of local government subject to state record retention laws?

No. Cities are not subject to the records retention board's schedule. However, the state archivist can advise on retention issues and there are statutory requirements for retention of certain city records. *See e.g.* K.S.A. 12-120 at [www.kslegislature.org](http://www.kslegislature.org)

## **IX WHERE CAN I OBTAIN MORE INFORMATION ON THE KORA?**

[http://www.ksag.org/open\\_govt.shtml](http://www.ksag.org/open_govt.shtml) - information from the Attorney General's office

<http://www.kscourts.org/ksag/> - links to newer Attorney General Opinions

[www.kslegislature.org](http://www.kslegislature.org) - access to all Kansas statutes

[www.kscourts.org](http://www.kscourts.org) - access to some Kansas cases

[http://www.accesskansas.org/government/agency\\_listing.html](http://www.accesskansas.org/government/agency_listing.html) - a list of the web sites for all Kansas state agencies